

§ 72.21

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packages or other containers of cigarettes to evidence payment of cigarette taxes; and

(c) The cigarettes are in the possession of any person other than any person who is:

(1) Holding a permit issued under 26 U.S.C. Chapter 52 as a manufacturer of tobacco products or as an export warehouse proprietor;

(2) Operating a customs bonded warehouse under 19 U.S.C. 1311 or 1555;

(3) An agent of a tobacco products manufacturer, an export warehouse proprietor, or an operator of a customs bonded warehouse;

(4) A common or contract carrier transporting the cigarettes involved under a proper bill of lading or freight bill which states the quantity, source, and destination of the cigarettes;

(5) Licensed or otherwise authorized by the State where the cigarettes are found to account for and pay cigarette taxes imposed by that State; and who has complied with the accounting and payment requirements relating to the license or authorization with respect to the cigarettes involved; or

(6) An agent of the United States, of an individual State, or of a political subdivision of a State and having possession of cigarettes in connection with the performance of official duties.

(7) Operating within a foreign-trade zone, established under 19 U.S.C. 81b, when the cigarettes involved have been entered into the foreign-trade zone under zone-restricted status or when foreign cigarettes have been admitted into the foreign-trade zone but have not been entered into the United States.

Contraband firearm. A firearm with respect to which there has been committed a violation of the National Firearms Act (26 U.S.C., Chapter 53) or any regulation issued thereunder.

Director. The Director, Bureau of Alcohol, Tobacco, and Firearms, the Department of the Treasury, Washington, DC.

Equity. As used in administrative action on petitions for remission or mitigation of forfeitures, shall mean that interest which a petitioner has in the personal property or carrier petitioned for at the time of final administrative action on the petition, but such inter-

est shall not be considered to include any unearned finance charges from the date of seizure or the date of default, if later; any amount rebatable on account of paid insurance premiums; attorney's fees for collection; any amount identified as dealer's reserve; or any amount in the nature of liquidated damages that may have been agreed upon by the buyer and the petitioner.

Person. An individual, trust, estate, partnership, association, company or a corporation.

Re-appraisal. An up-to-date statutory appraisal to determine the present value of the property or carrier involved in a petition for remission or mitigation of forfeiture made in the same manner as the original appraisal, and performed at the written request of the petitioner whose petition in regard to the property or carrier has been allowed and who, for reasonable cause, is not satisfied that the original appraisal represents the present value of the property or carrier.

Region. A Bureau of Alcohol, Tobacco, and Firearms Region.

U.S.C. The United States Code.

[T.D. ATF-48, 43 FR 13535, Mar. 31, 1978; 44 FR 55841, Sept. 28, 1979, as amended by T.D. ATF-65, 45 FR 8593, Feb. 8, 1980; T.D. ATF-183, 49 FR 37061, Sept. 21, 1984]

Subpart C—Seizures and Forfeitures

§ 72.21 Personal property and carriers subject to seizure.

(a) Personal property may be seized by duly authorized ATF officers for forfeiture to the United States when involved, used, or intended to be used, in violation of the laws of the United States which ATF officers are empowered to enforce, including Title 18 U.S.C. Chapters 40 (explosives), 44 (firearms), 59 (liquor traffic), 114 (contraband cigarettes), 229 (liquor); Title 26 U.S.C. Chapters 51 (distilled spirits), 52 (tobacco), 53 (firearms); and Title 27 U.S.C. 206 (liquor). Carriers, as defined in § 72.11, similarly may be seized when used in violation of Title 49 U.S.C. App., Chapter 11 (transportation, et cetera) of contraband firearms or contraband cigarettes.

(b) Any action or proceeding for the forfeiture of firearms or ammunition seized under 18 U.S.C. Chapter 44 shall be commenced within 120 days of such seizure.

(c) Upon acquittal of the owner or possessor, or the dismissal of the criminal charges against such person other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which such person is subject, firearms or ammunition seized or relinquished under 18 U.S.C. Chapter 44 shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law.

[T.D. ATF-270, 53 FR 10489, Mar. 31, 1988, as amended by T.D. ATF-363, 60 FR 17449, Apr. 6, 1995]

§ 72.22 Forfeiture of seized personal property and carriers.

(a) *Administrative forfeiture.* (1) Personal property seized as subject to forfeiture under Title 26 U.S.C. which has an appraised value of \$100,000.00 or less, and any carrier appraised by the seizing officer at \$100,000.00 or less under the customs laws, shall be forfeited to the United States in administrative or summary forfeiture proceedings.

(2) In respect of personal property seized as subject to forfeiture under title 26 U.S.C. which, in the opinion of the seizing officer, has an appraised value of \$100,000.00 or less, such officer shall cause a list containing a particular description of the seized property to be prepared and an appraisal thereof to be made by three sworn appraisers, selected by the seizing officer, who shall be respectable and disinterested citizens of the United States residing within the internal revenue district wherein the seizure was made. Such list and appraisal shall be properly attested to by the seizing officer and such appraisers.

(3) In respect of personal property seized as subject to forfeiture under title 26 U.S.C. and found by the appraisers to have a value of \$100,000.00 or less, the Director or his delegate shall publish a notice once a week for three consecutive weeks, in some newspaper

of the judicial district where the seizure was made, describing the articles and stating the time, place, and cause of their seizure, and requiring any person claiming them to make such claim within 30 days from the date of the first publication of such notice.

(4) In respect of carriers seized as subject to forfeiture under the customs laws which, in the opinion of the seizing officer, have an appraised value of \$100,000.00 or less, such officer shall cause a list containing a particular description of the seized carriers to be prepared and the seizing officer shall make the appraisal thereof. Such list and appraisal shall be properly attested to by the seizing officer.

(5) In respect of carriers seized as subject to forfeiture under the customs laws and appraised by the seizing officer as having a value of \$100,000.00 or less, the Director or his delegate shall publish a notice of seizure in the same manner as required by paragraph (a)(3) of this section; provided that the time for making claim shall be within 20 days from the date of first publication. (19 U.S.C. 1608).

(6) Any person claiming the personal property or carrier so seized, within the time specified in the notice, may file with the Director a claim stating the interest in the articles or carrier seized, and may execute a bond to the United States, conditioned that, in case of condemnation of the articles or carrier so seized, the obligators shall pay all the costs and expenses of the proceedings to obtain such condemnation. The amount of the cost bond is \$2,500.00, unless the seized property is a vehicle, vessel, or aircraft seized for a violation of 49 U.S.C. App., Chapter 11, in which case the cost bond shall be in the amount of \$2,500 or ten percent of the value of the claimed property, whichever is lower, but not less than \$250.00. Both the claim and the cost bond shall be executed in quadruplicate.

(b) *Judicial condemnation.* The Chief Counsel of the Bureau of Alcohol, Tobacco and Firearms, shall authorize institution of forfeiture proceedings in those instances where the appraised value of the seized personal property or